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and HOME DEPOT U.S.A., INC.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 ANA BARAHONA,

14 Plaintiff,

15 v.

16 TTI OUTDOOR POWER EQUIPMENT, INC.
17 dba HOMELITE OUTDOOR TOOLS; HOME
18 DEPOT USA, INC., and DOES 1 through 20,

19 Defendant.

Case No.23-cv-04396-RGK-JC

**STIPULATED PROTECTIVE
ORDER**

**[CHANGES MADE BY COURT TO
PARAGRAPHS 3, 5.2(B), 8, 9]**

20 1. A. PURPOSES AND LIMITATIONS
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22 Discovery in this action will involve the production of confidential, proprietary, or private
23 information for which special protection from public disclosure and from use for any purpose
24 other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate
25 to and petition the Court to enter the following Stipulated Protective Order. The parties
26 acknowledge that this Order does not confer blanket protection on all disclosures or responses to
27 discovery and that the protection it affords from public disclosure and use extends only to the
28 limited information or items that are entitled to confidential treatment under the applicable legal

1 principles. The parties further acknowledge, as set forth in Section 12.3 below, that this Stipulated
2 Protective Order does not entitle them to file confidential information under seal; Civil Local
3 Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
4 when a party seeks permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve trade secrets, customer and pricing lists and other valuable
7 research, development, commercial, financial, technical and/or proprietary information for which
8 special protection from public disclosure and from use for any purpose other than prosecution of
9 this action is warranted. Such confidential and proprietary materials and information may
10 consist of, among other things, confidential business or financial information, information
11 regarding confidential business practices, or other confidential research, development, or
12 commercial information (including information implicating privacy rights of third parties),
13 information otherwise generally unavailable to the public, or which may be privileged or
14 otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or
15 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
16 resolution of disputes over confidentiality of discovery materials, to adequately protect
17 information the parties are entitled to keep confidential, to ensure that the parties are permitted
18 reasonable necessary uses of such material in preparation for and in the conduct of trial, to
19 address their handling at the end of the litigation, and serve the ends of justice, a protective order
20 for such information is justified in this matter. It is the intent of the parties that information will
21 not be designated as confidential for tactical reasons and that nothing be so designated without a
22 good faith belief that it has been maintained in a confidential, non-public manner, and there is a
23 good cause why it should not be part of the public record of this case.

24 **2. DEFINITIONS**

25 2.1 Action: this pending federal lawsuit.

26 2.2 Challenging Party: A Party or Non-Party that challenges the designation of
27 information or items under this Order.

1 2.13 Professional Vendors: Persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.14 Protected Material: Any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL.”

7 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this agreement cover not only confidential material (as
11 defined above), but also (1) any information copied or extracted from confidential material; (2) all
12 copies, excerpts, summaries, or compilations of confidential material; and (3) any deposition
13 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
14 Material, other than during a court hearing or at trial.

15 However, the protections conferred by this agreement do not cover information that is in
16 the public domain or becomes part of the public domain through trial or otherwise.

17 Any use of Protected Material during a court hearing or at trial shall be governed by the
18 orders of the presiding judge. This Order does not govern the use of Protected Material during a
19 court hearing or at trial..

20 **4. DURATION**

21 Even after final disposition of this litigation, the confidentiality obligations imposed by
22 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
23 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
24 claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after
25 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
26 Action, including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
3 non-party that designates information or items for protection under this agreement must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. The
5 designating party must designate for protection only those parts of material, documents, items, or oral
6 or written communications that qualify, so that other portions of the material, documents, items, or
7 communications for which protection is not warranted are not swept unjustifiably within the ambit of
8 this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
11 encumber or delay the case development process or to impose unnecessary expenses and burdens on
12 other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
17 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure
18 or discovery material that qualifies for protection under this agreement must be clearly so designated
19 before or when the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) Information in documentary form: (e.g., paper, or electronic documents and deposition
22 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating
23 party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only
24 a portion or portions of the material on a page qualifies for protection, the producing party also must
25 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

26 (b) Testimony given in deposition: the parties and any participating non-parties must identify
27 on the record, during the deposition, all protected testimony, without prejudice to their right to so
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1 designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen
2 days after receiving the transcript of the deposition, designate portions of the transcript, or exhibits
3 thereto, as confidential. If a party or non-party desires to protect confidential information during a
4 pretrial hearing or at trial, the issue should be addressed to the presiding judicial officer at an
5 appropriate juncture which, in the case of trial, would include the pretrial conference.

6 (c) Other tangible items: the producing party must affix in a prominent place on the exterior of
7 the container or containers in which the information or item is stored the word "CONFIDENTIAL." If
8 only a portion or portions of the information or item warrant protection, the producing party, to the
9 extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party's right
12 to secure protection under this agreement for such material. Upon timely correction of a designation,
13 the receiving party must make reasonable efforts to ensure that the material is treated in accordance
14 with the provisions of this agreement.

15 **6. CHALLENGING CONFIDENTIAL DESIGNATIONS**

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time that is consistent with the Court's Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
19 under Local Rule 37.1 et seq.

20 6.3 The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or
22 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
23 sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all
24 parties shall continue to afford the material in question the level of protection to which it is entitled
25 under the Producing Party's designation until the Court rules on the challenge.

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1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
3 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
4 defending, or attempting to settle this, Action. Such Protected Material may be disclosed only to the
5 categories of persons and under the conditions described in this Order. When the Action has been
6 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
7 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location
8 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
10 court or permitted in writing by the Designating Party, a Receiving Party may disclose any
11 information or item designated “CONFIDENTIAL” only to:

12 (a) the receiving party’s counsel of record in this action, as well as employees of counsel to
13 whom it is reasonably necessary to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including in house counsel) of the receiving party to
15 whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular
16 document or material produced is for Attorney’s Eyes Only and is so designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and
18 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the duplication of confidential
21 material, provided that counsel for the party retaining the copy or imaging service instructs the service
22 not to disclose any confidential material to third parties and to immediately return all originals and
23 copies of any confidential material;

24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
25 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
26 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
27 deposition testimony or exhibits to depositions that reveal confidential material must be separately
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1 bound by the court reporter and may not be disclosed to anyone except as permitted under this
2 agreement;

3 (g) the author or recipient of a document containing the information or a custodian or other
4 person who otherwise possessed or knew the information.

5 (h) mock jury trial consultants or jury focus group members to whom disclosure is reasonably
6 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
7 (Exhibit A). Mock jurors shall not have access to the documents in paper form, or any other medium
8 for which they can retain access to the documents upon completion of the mock jury or focus group.

9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
10 **OTHER LITIGATION**

11 If a Party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this Action as "CONFIDENTIAL," that
13 Party must:

- 14 (a) promptly notify in writing the Designating Party. Such notification shall include a
15 copy of the subpoena or court order;
- 16 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
17 other litigation that some or all of the material covered by the subpoena or order is
18 subject to this Protective Order. Such notification shall include a copy of this
19 Stipulated Protective Order, and
- 20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 Designating Party whose Protected Material may be affected.

22 If the Designating Party

23 If the Designating Party timely seeks a protective order, the Party served with the
24 subpoena or court order shall not produce any information designated in this action as
25 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
26 issued, unless the Party has obtained the Designating Party's permission or unless otherwise
27 required by the law or court order. The Designating Party shall bear the burden and expense of

1 seeking protection in that court of its confidential material and nothing in these provisions should
2 be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
3 directive from another court.

4 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
5 **THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a Non-Party in this
7 Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
8 connection with this litigation is protected by the remedies and relief provided by this Order.
9 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
10 additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
12 Party's confidential information in its possession, and the Party is subject to an agreement with
13 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all the
15 information requested is subject to a confidentiality agreement with a Non-Party.

16 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
17 Action, the relevant discovery request(s), and a reasonably specific description of the information
18 requested; and

19 (3) make the information requested available for inspection by the Non-Party, if
20 requested.

21 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
22 receiving the notice and accompanying information, the Receiving Party may produce the Non-
23 Party's confidential information responsive to the discovery request. If the Non-Party timely
24 seeks a protective order, the Receiving Party shall not produce any information in its possession
25 or control that is subject to the confidentiality agreement with the Non-Party before a
26 determination by the court unless otherwise required by the law or court order. Absent a court
27 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
28 this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OR PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under
3 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
4 If a Party's request to file Protected Material under seal is denied by the court, then the Receiving
5 Party may file the information in the public record unless otherwise instructed by the court.

6 **13. FINAL DEPOSITION**

7 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a
8 written request by the Designating Party, each Receiving Party must return all Protected Material
9 to the Producing Party or destroy such material. As used in this subdivision, "all Protected
10 Material" includes all copies, abstracts, compilations, summaries, and any other format
11 reproducing or capturing any of the Protected Material. Whether the Protected Material is
12 returned or destroyed, the Receiving Party must submit a written certification to the Producing
13 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that
14 (1) identifies (by category, where appropriate) all the Protected Material that was returned or
15 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
16 compilations, summaries or any other format reproducing or capturing any of the Protected
17 Material. Notwithstanding this provision, Counsel is entitled to retain an archival copy of all
18 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
19 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
20 consultant and expert work product, even if such materials contain Protected Material. Any such
21 archival copies that contain or constitute Protected Material remain subject to this Protective
22 Order as set forth in Section 4 (DURATION).

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1 Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.

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4
5 December 18, 2023

Respectfully submitted,

6 RILEY SAFER HOLMES & CANCELA
7 LLP

8 By: /s/ Jeffrey R. Williams

9 Jeffrey R. Williams
10 David W. Kempen
11 Attorneys for Defendants
12 TTI OUTDOOR POWER
EQUIPMENT, INC. and
HOME DEPOT U.S.A., INC.

13 December 18, 2023

Respectfully submitted,

14 THON BECK VANNI CALLAHAN &
15 POWELL

16
17 By: /s/ Michael P. O'Connor

18 Michael P. O'Connor
19 Attorneys for Plaintiff
ANA BARAHONA

20 PURSUANT TO STIPULATION, IT IS SO ORDERED AS MODIFIED.

21 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
22 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
23 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
24 documents, including the attorney-client privilege, attorney work-product protection, or any other
25 privilege or protection recognized by law.

26 Dated: December 20, 2023

/s/
27 Hon. Jacqueline Chooljian
28 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print out or type full name], of

[print out or type full name], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on December 20,
2023 in the case of *Barahona v. TTI Outdoor Power Equipment, Inc.* (No.23-cv-04396-RGK-JC).
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____